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FILED

JAN 25 2008

RICHARD W. MONTGOMERY  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JSW

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CV 08

0624

BOARD OF TRUSTEES OF THE  
TEAMSTERS LOCAL UNION NO. 856  
HEALTH AND WELFARE TRUST FUND;  
MICHAEL J. McLAUGHLIN, TRUSTEE,  
Plaintiffs,

vs.

PERSONALITY HOTELS II, INC.,  
a California corporation,  
also known as PERSONALITY HOTELS,  
INC.,

Defendants.

No

COMPLAINT

Plaintiff complain of defendant and for a cause of action  
alleges that:

1. Jurisdiction of this Court is founded upon Section  
301(c)(1) of the National Labor Relations Act of 1947 [29 U.S.C.  
§185(a)] and Section 502 of the Employee Retirement Income Security  
Act of 1974, said Act being hereinafter referred to as "ERISA" (29  
U.S.C. §1132), in that defendant has violated a collective bargaining

10

1 agreement and certain Trust Agreements, thereby violating  
 2 provisions of ERISA and the provisions of the National Labor Relati  
 3 Act of 1947. This action is also brought pursuant to the Fede  
 4 Declaratory Judgment Act (28 U.S.C. §2201 et seq.) in a case of act  
 5 controversy between plaintiffs and defendant, and for a Judgment t  
 6 defendant pay fringe benefit contributions in accordance with  
 7 contractual obligations.

8           2. Plaintiff BOARD OF TRUSTEES OF THE TEAMSTERS LOCAL UN  
 9 NO. 856 HEALTH AND WELFARE TRUST FUND (hereinafter "TRUST FUN  
 10 named in the caption, are trustees of employee benefit plans with  
 11 the meaning of §§3(1) and (3) and §502(d)(1) of ERISA, 29 U.S.  
 12 §1002(1) and (3) and §1132(d)(1), and a multiemployer plan within  
 13 meaning of §§3(37) and 515 of ERISA, 29 U.S.C. §§1002(37) and  
 14 Plaintiff MICHAEL J. McLAUGHLIN is a Trustee. Said Trust  
 15 authorized to maintain suit as an independent legal entit  
 16 §502(d)(1) of ERISA, 29 U.S.C. §1132(d)(1). Said Trust  
 17 administered in the City and County of San Franc  
 18 performance of the obligations set forth herein is due

19           3. Each and every defendant herein is th  
 20 and every other defendant herein. Defendants and  
 21 engaged in commerce or in an industry affecting c

22           4. At all times pertinent hereto defe  
 23 written collective bargaining agreement wi  
 24 Clerical Employees & Helpers Local Union  
 25 Brotherhood of Teamsters, a labor organ  
 26 affecting commerce. The aforesaid agreem  
 27 shall make contributions to the TRUST F  
 28 employees on a regular basis on all hc

1 shall be bound to and abide by all the provisions of the respective  
2 Agreement and Declarations of Trust of said TRUST FUND (hereinafter  
3 the "Trust Agreement").

4           5. The Trust Fund relies upon a self reporting system.  
5 Defendant has unique knowledge of the amounts of contributions that  
6 they are liable to pay each month, and have a fiduciary obligation to  
7 accurately report the amount to the Trust Fund. The Trust Funds have  
8 recently completed an audit of defendant's books and records.

9           6. Defendant has breached both the provisions of the  
10 collective bargaining agreement and the Trust Agreement above referred  
11 to by failing to pay all moneys due on behalf of defendant's employees  
12 to the TRUST FUND. Said breach constitutes a violation of ERISA (29  
13 U.S.C. 1002, et seq.) and of the National Labor Relations Act of 1947.

14           7. Pursuant to the terms of the collective bargaining  
15 agreement there is now due, owing and unpaid from defendant to the  
16 TRUST FUND contributions for hours worked by covered employees for the  
17 period March 2005 through June 2006. The total amount due, including  
18 liquidated damages is \$5,300.92. Additional monthly amounts may  
19 become due during the course of this litigation and in the interest  
20 of judicial economy, recovery of said sums will be sought in this  
21 case. Interest is due and owing on all principal amounts due and  
22 unpaid at the legal rate from the dates on which the principal amounts  
23 due accrued.

24           8. An actual controversy exists between plaintiffs and  
25 defendant in that plaintiffs contend that plaintiffs are entitled to  
26 a timely correct monthly payment of trust fund contributions now and  
27 in the future pursuant to the collective bargaining agreement and the  
28 Trust Agreement, and defendant refuses to make such payments in a

1 timely correct manner.

2           9. The Trust Agreement provides that, in the event suit  
3 is instituted to enforce payments due thereunder, the defendant shall  
4 pay court costs and reasonable attorneys' fee. It has been necessary  
5 for plaintiffs to employ ERSKINE & TULLEY, A PROFESSIONAL CORPORATION,  
6 as attorneys to prosecute the within action, and reasonable attorneys'  
7 fee should be allowed by the Court on account of the employment by  
8 plaintiffs of said attorneys.

9           WHEREFORE, plaintiffs pray:

10           1. That the Court render a judgment on behalf of plaintiffs  
11 for all contributions due and owing to the date of judgment based upon  
12 the audited, plus liquidated damages provided for by the contract,  
13 interest at the legal rate, reasonable attorneys' fees incurred in  
14 prosecuting this action and costs.

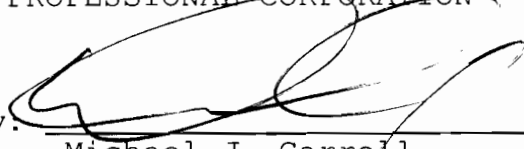
15           2. That the Court enjoin the defendant from violating the  
16 terms of the collective bargaining agreements and the Trust Agreement  
17 for the full period for which defendant is contractually bound to file  
18 reports and pay contributions to the TRUST FUND.

19           3. That the Court retain jurisdiction of this cause pending  
20 compliance with its orders.

21           4. For such other and further relief as the Court deems  
22 just and proper.

23           Dated: January 24, 2008

24           ERSKINE & TULLEY  
25           A PROFESSIONAL CORPORATION

26           By:   
27           Michael J. Carroll  
28           Attorneys for Plaintiffs